IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 1175(S/S)2006

Yogesh Pal Singh S/o late Sri Deobrat Singh,
And eight others. ---- Petitioners.

Vs.

1. State of Uttarakhand through Secretary Basic Education, Dehradun, Uttarakhand.
2. Finance Controller, Directorate of Education, Uttarakhand.
3. Director, Vidhyalayi Shiksha (School Education), Dehradun, Uttarakhand,
4. Deputy Director Vidhyalayi Shiksha (School Education), Dehradun, Uttarakhand,
5. Sanjeev Sharma, Upper Divisional Clerk, Office of Addl. District Education Officer (Basic) Haridwar,
6. Vinod Kumar Khali, Junior Assistant, Education Directorate, Mayur Vihar, Dehradun, district Dehradun. ----Respondents.

Sri Ravi Babulkar, learned counsel for the petitioners,
Sri Paresh Tripathi, learned Standing Counsel for State of Uttarakhand/respondent nos. 1 to 4,
None for respondent nos. 5 & 6.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Ravi Babulkar, learned counsel for the petitioners and Sri Paresh Tripathi, learned Standing Counsel for State of Uttarakhand/respondent nos. 1 to 4. None for respondent nos. 5 & 6.

By means of this writ petition, the petitioners have prayed for the following reliefs:-

i. Issue a writ , rule or direction in the nature of certiorari calling for the records and quashing the impugned interview scheduled to be held on 02.09.2006 for the post of Assistant Accountant in the office of Account

Sections in Education Department as is evident from annexure-3 & 4,

ii. Issue a writ, rule or direction in the nature of mandamus commanding and directing the respondents to issue seniority list of Account Clerks of Account Offices of the Education Department and then fill up the vacancies for Assistant Accountants in accordance with their seniority inside accounts cadre,

iii. Issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case,

iv. Award cost of the petition in favour of the petitioners.

Stand of the petitioners is that they are working with the respondent's Department as Accounts Clerks. On 7th August 1986 a separate Accounts Cadre was created in the Education Department. In the month of February 2006, 7 posts of Assistant Accountant fell vacant on account of promotion of Assistant Accountants to the post of Accountants, consequently interview call letters were issued by the respondents to those persons who were not working in the Accounts Cadre.

Counsel for the petitioners has submitted that as per the G.O. issued by the State of U.P. on 11th August 1983, the post of Assistant Accountant can be filled up by way of direct recruitment and by way of promotion and, in case, the posts of Assistant Accounts are to be filled by way of promotion that should be filled from amongst the Accounts Clerks who had at least 7 years' experience as Accounts Clerk. Since the respondent nos. 5 & 6, who have been issued interview call letters, are not working as Accounts Clerk, therefore their candidature for promotion to the posts of Assistant Accountants

cannot be considered. I find fore in the submission of the learned counsel for the petitioners.

The respondents were granted time to file counter affidavit twice and vide order dated 02.04.2007, they were further allowed two weeks', and no more, time for filing counter affidavit, however no counter affidavit has been filed till date. Notices were also issued to the private respondent nos. 5 & 6 on 30th August. The office has furnished report that notices were sent to the private respondents through speed post but the same have not been received back. This office report is of dated 30th March 2007. None has put in appearance on behalf of respondent nos. 5 & 6. This Court on 30th August 2006 passed order that till the next date of listing, the respondents are restrained to hold interview for the post of Assistant Accountant, which is going to be held on 02.09.2006.

Since no counter is filed, therefore the assertions made in the writ petition, no doubt, are uncontroverted. In the forgoing circumstances, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed with the direction to the respondents to fill up the posts of Assistant Accountants strictly in accordance with law and candidature of only those candidates may be considered who are eligible to be promoted on the posts of Assistant Accountants as per the Rules and Regulation. No order as to costs.

(M.M. Ghildiyal, J.)

April 26, 2007:
NCM: